



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility

Mobile home park owners would now be required to offer mobile home owner associations an opportunity to purchase the mobile home park when the park owner receives a bona fide unsolicited offer to purchase the park.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present situation

The landlord-tenant relationship between a mobile home park owner and a mobile home owner in a mobile home park is a unique relationship. Traditional landlord-tenant concepts are thought inapplicable where the land is owned by the park and the homes on the property are owned by the home owner. This relationship is impacted by the high cost of moving a mobile home. Chapter 723, F.S., governs the relationship between mobile home park owners and mobile home owners. Section 723.004(1), F.S., provides:

The Legislature finds that there are factors unique to the relationship between a mobile home owner and a mobile home park owner. Once occupancy has commenced, unique factors can affect the bargaining position of the parties and can affect the operation of market forces. Because of those unique factors, there exist inherently real and substantial differences in the relationship which distinguish it from other landlord-tenant relationships. The Legislature recognizes that mobile home owners have basic property and other rights which must be protected. The Legislature further recognizes that the mobile home park owner has a legitimate business interest in the operation of the mobile home park as part of the housing market and has basic property and other rights which must be protected.

The Florida Supreme Court, in addressing mobile home park issues, has stated

a hybrid type of property relationship exists between the mobile home owner and the park owner and that the relationship is not simply one of landowner and tenant. Each has basic property rights which must reciprocally accommodate and harmonize. Separate and distinct mobile home laws are necessary to define the relationships and protect the interests of the persons involved.

Stewart v. Green, 300 So.2d 889, 892 (Fla. 1974)

Chapter 723, F.S., addresses various aspects of the relationship between the mobile home owner and the mobile home park owner.

The mobile home owners in a mobile home park have a statutory right of first refusal to purchase the mobile home park under certain circumstances. In a mobile home park where the mobile home owners have created a homeowners' association that complies with the provisions of ss. 723.075-.079, F.S., if the mobile home park owner "offers [the] mobile home park for sale", the mobile home park owner must notify the homeowners' association of the offer.

The homeowners' association has the right to purchase the mobile home park provided the homeowners' association executes an agreement to purchase the mobile home park at the price and terms of the offer within 45 days from the date that the mobile home park owner mailed notice of the offer to the homeowners' association. If the homeowners' association does not agree to purchase the

mobile home park at the price and terms offered within the 45 days, the mobile home park owner is free to sell the mobile home park to any purchaser, except that if the mobile home park owner later reduces the offer price, the homeowners' association will have an additional 10 days to meet the lowered price by executing a contract.

If the mobile home park owner receives an offer after the expiration of the 45 day period, the mobile home park owner must notify the homeowners' association of the offer but is not required to sell the mobile home park to the homeowners' association even if the association agrees to match the price and terms. The term "offer" means "any solicitation by the park owner to the general public." The statutory right of first refusal only applies when the mobile home park is offered for sale to the general public; accordingly, a mobile home park owner who receives an unsolicited offer to purchase the mobile home park is under no duty to offer the mobile home park to the homeowners' association.<sup>1</sup>

A transfer by a partnership to any of its partners is one of the exemptions to s. 723.071, F.S. Certain other exclusions to the statutory right of first refusal are also applicable.<sup>2</sup>

### Effect of proposed changes

The bill specifies that the homeowners' association's right to purchase applies only to the mobile home park that it represents. The bill requires the park owner to notify the homeowners' association if the terms and conditions of an offer are changed, which allows the homeowners' association an additional 10 days to meet the price, terms, and conditions of the offer.

This bill expands the right of first refusal for mobile home owner associations by providing that if the mobile home park owner "receives a bona fide offer to purchase the park which the owner intends to consider or make a counteroffer to" (this applies to an unsolicited offer), the mobile home park owner must notify the homeowners' association. The owner then is required to allow the homeowners' association the opportunity to purchase the park under the same terms and conditions as the offer.

This bill also removes the provisions which provides that, if the mobile home park owner receives an unsolicited offer, the mobile home park owner must notify the homeowners' association of the offer but is not required to sell the mobile home park to the homeowners' association even if the association agrees to match the price and terms.

The bill specifies that the exemption from the requirements of offer and notice would not apply to the transfer by a partnership to any of the partners if the transfer is for the purpose of avoiding a sale to a homeowners association.

## C. SECTION DIRECTORY:

Section 1. Amends s. 723.071, F.S., relating to the sale of mobile home parks.

Section 2. Effective date - July 1, 2005.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

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<sup>1</sup> *Brate v. Chulavista Mobile Home Park Owners Association, Inc.*, 559 So.2d 1190 (Fla. 2nd DCA 1990), *review denied*, 574 So.2d 140 (Fla. 1990).

<sup>2</sup> Other exceptions to the statutory right of first refusal are: sale or transfer to a descendant as if the park owner had died intestate; any transfer by gift, devise, or operation of law; any transfer by a corporation to an affiliate -- "affiliate" means any shareholder of the transferring corporation; any corporation or entity owned or controlled, directly or indirectly, by the transferring corporation or any other corporation or entity owned or controlled, directly or indirectly, by any shareholder of the transferring corporation; any transfer by a partner to one of its partners; any conveyance of interest in the park incidental to financing the park; any conveyance resulting from foreclosure of a mortgage, deed, or other instrument encumbering the park property; any sale or transfer between or among joint tenants or tenants in common owning the park; and any purchase of the park by a government entity exercising its eminent domain powers.

1. Revenues:  
None anticipated.
2. Expenditures:  
None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
None.
2. Expenditures:  
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Department of Business & Professional Regulation reports that the bill is not anticipated to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

This bill expands the statutory right of first refusal that mobile home owners have regarding the sale of the mobile home park in which they reside. The Second District Court of Appeal has raised the possibility that the current form of statutory right of first refusal is perhaps an unconstitutional restraint upon alienation of property.<sup>3</sup> There is, however, no specific reference in the state or federal constitutions regarding restrictions upon the alienation of property, and it is clear that statutory law takes priority over common law concepts. Additionally, the courts have stated:

Where mobile homes are concerned, substantial constitutional property rights are implicated on both sides of the debate.<sup>4</sup> The ancient rule against restraints on alienation is founded entirely upon considerations of public policy, specifically, the idea that the free alienation of property fosters

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<sup>3</sup> *Brate v. Chulavista Mobile Home Park Owners Association, Inc.*, 559 So.2d 1190, 1192 (Fla. 2nd DCA 1990), *review denied*, 574 So.2d 140 (Fla. 1990). The court said: "We are not confronted in this proceeding with, nor do we purport to pass upon, any question of whether section 723.071(1) offends, either in a constitutional or common law setting, the right of mobile home park owners to enjoy unrestricted alienation of their real property. We must acknowledge, however, that most regulatory statutes affecting realty, which have withstood attack, focus upon the use of property, and not its alienation."

<sup>4</sup> *Harris v. Martin Regency, Ltd.*, 576 So.2d 1294 (Fla. 1991).

economic and commercial development . . . . The rule has long been recognized as precluding only Unlimited or Absolute restraints upon alienation.<sup>5</sup>

B. RULE-MAKING AUTHORITY:

NA.

C. DRAFTING ISSUES OR OTHER COMMENTS:

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

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<sup>5</sup> *Seagate Condominium Association, Inc. v. Duffy*, 330 So.2d 484, 485 (Fla. 4th DCA 1976).